

Opinion No. 35-993

April 20, 1935

BY: FRANK H. PATTON, Attorney General

TO: Mr. W. S. Barnes, Auditor, Bureau of Revenue, Income Tax Department, Santa Fe, New Mexico.

{*63} This will acknowledge receipt of your letter dated April 19, 1935, regarding the question of the liability of a non-resident as to income tax due the State of New Mexico under Chapter 85, Laws of 1933.

After a careful consideration of Section 25 of the aforesaid act, it is our opinion that said Section 25 **only** applies to a non-resident taxable thereunder as follows:

1. If the laws of the state of his domicile grant a substantial similar credit to residents of this state. Therefore, the question is, does Kansas grant a substantial similar credit to residents of New Mexico? No. The Kansas act grants a credit to residents of Kansas on income derived from sources in another state and does not grant a similar credit to non-residents, i. e., residents of New Mexico.

2. Does Kansas exempt from taxation the personal incomes of residents of New Mexico? For example, a resident of New Mexico residing in Kansas and deriving a portion of his income from the State of New Mexico. It is our opinion that Kansas does not exempt a non-resident for the reason that the Kansas statute specifically provides credits against the tax may be made by a resident while no mention is made to exempt a non-resident.

Therefore, it is our opinion that Section 25 does not apply in the instant cause and the income earned in New Mexico by a Kansas resident residing here is taxable under the New Mexico State Income Law.

By EDW. P. CHASE,

Asst. Atty. General